

IN THE FIFTH COURT
OF APPEALS OF TEXAS

ANTHONY RASHAD GEORGE

Appellant

v.

THE STATE OF TEXAS

Appellee

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FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS

09/23/2019 11:00:07 AM

LISA MATZ
Clerk

No. 05-18-00941-CR

**RESPONSE TO STATE'S SECOND MOTION
FOR EXTENSION OF TIME TO FILE BRIEF**

NOW COMES Anthony Rashad George, Appellant, and files this Response to the State's Second Motion for Extension of Time to File Brief. Appellant urges this Court that the State should not be allowed to file a brief at this late date and to participate in Wednesday's oral argument. But if this Court does allow the State to file a very late brief and participate in oral argument, the State should be sanctioned in some manner for its flagrant and intentional disregard of a deadline set by the Court.

I

The State's brief in this case was originally due on March 24, 2019. Upon the State's timely motion for an extension, this Court extended the due date until April 23, 2019. Until now, however, that

was the last anyone heard from the State. For the last five months—even after this Court on August 6, 2019, notified counsel for Appellant and counsel for the State of the submission and oral argument date for this case—the State has done nothing in this case. Now, two days before this case is set for oral argument, the State has reappeared and moved this Court for leave to finally file its brief.

II

Allowing the State to file a brief five months late, and just two days before this case is set for oral argument, deprives this Court of a written reply brief prior to the oral argument of this case. But the State's flagrant disregard should not prompt any delay of Wednesday's oral argument. The undersigned counsel is ready to present argument to the Court and, relying on the oral argument date set by the Court, flew from North Carolina to present oral argument. Appellant's family arranged to take off from work to attend the oral argument. The undersigned counsel and Appellant's family should not be required to rearrange their schedules because of the State's disregard of deadlines set by this Court.

III

The State's flagrant disregard for this Court's deadlines is, unfortunately, not unusual. The undersigned counsel has practiced throughout Texas for more than 40 years. During that time, prosecutors in appellate courts (and in trial courts, for that matter) have routinely ignored court-imposed deadlines. This is disrespectful to the court that imposed the deadline and fosters a public disrespect for the criminal justice system. As a defense attorney, it is hard to explain to a client how he or she will receive fair treatment from a court that allows prosecutors to play by a different set of rules.

There is no reason why the State in this case could not have filed a second, third, or fourth motion for an extension of time to file a brief, if necessary. Instead, the State simply ignored the Court's deadline for filing a brief, assuming—because past experience is a good predictor of future behavior—that this Court will accept a State's brief no matter how late the filing, and that this Court will not impose any type of sanction on the State for its behavior. But a deadline set by a court should mean something. And it does not unless there is some consequence for ignoring the deadline. The reality is that prosecutors ignore deadlines because they know courts will not enforce them. This

Court should end the practice of allowing the State to treat deadlines as suggestions. There should be a consequence for flagrantly and intentionally ignoring a deadline set by this Court. Otherwise, this Court has no reason to expect that prosecutors will pay attention to the deadlines set by the Court. Prosecutors will continue to file briefs when it is convenient for them and not when directed to do so by the Court.

IV

FOR THE ABOVE REASONS, Appellant respectfully asks that this Court deny leave to the State to file its very late brief and that this Court deny the State the opportunity to present oral argument. Alternatively, if the Court decides to allow the State to file its very late brief and present oral argument, Appellant urges this Court to fashion some other appropriate sanction for the intentional and flagrant disregard of the deadline set by the Court for the State to file its brief.

Respectfully submitted,

/s/ Robert N. Udashen

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CERTIFICATE OF SERVICE

I hereby certify that, concurrent with this document's electronic filing, it was electronically served to Assistant District Attorney Jaclyn O'Connor Lambert at jaclyn.oconnor@dallascounty.org.

/s/ Robert N. Udashen
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